

IC 31-16-12.5

Chapter 12.5. Seizure of State Income Tax Refunds for Delinquent Child Support

IC 31-16-12.5-1

Exception

Sec. 1. This chapter does not apply to a support order entered in a Title IV-D case.

As added by P.L.27-2004, SEC.4.

IC 31-16-12.5-2

Petition; procedure; intervention

Sec. 2. (a) A custodial parent may file a petition for a setoff of child support from a state income tax refund payable to a child support obligor in:

- (1) the court that entered the original child support order; or
- (2) a court of competent jurisdiction located in the county of residence of the custodial parent.

(b) The petition must be verified and must include all of the following:

- (1) The full name of:
 - (A) the obligor;
 - (B) the custodial parent; and
 - (C) each child to whom the obligor owes child support.
- (2) An averment that:
 - (A) the obligor's aggregate child support arrearage on the date the petition is filed is at least one thousand five hundred dollars (\$1,500); and
 - (B) the obligor has intentionally violated the terms of the most recent child support order.
- (3) An indication of whether the custodial parent:
 - (A) has received or is receiving assistance under the Title IV-A program; or
 - (B) has assigned child support payments under IC 12-14-7-1; during the period for which child support is owed by the obligor.

(c) The court shall notify the child support bureau of the department of the pendency of an action under this chapter if the petition:

- (1) indicates under subsection (b)(3)(A) that the custodial parent has received or is receiving assistance; or
- (2) indicates under subsection (b)(3)(B) that an assignment has occurred.

(d) The state has a right to intervene as a party in a hearing under this chapter if the custodial parent has received or is receiving assistance as described in subsection (b)(3)(A) or if an assignment as described in subsection (b)(3)(B) has occurred.

As added by P.L.27-2004, SEC.4. Amended by P.L.145-2006, SEC.238.

IC 31-16-12.5-3

Prohibition

Sec. 3. A custodial parent may not bring an action under this chapter with respect to an obligor's state income tax refund for a calendar year if the child support bureau has initiated an action under IC 6-8.1-9.5 to set off the obligor's tax refund for that calendar year. *As added by P.L.27-2004, SEC.4.*

IC 31-16-12.5-4

Determination of refund eligibility and filing status

Sec. 4. (a) A court that receives a petition under section 2 of this chapter shall send an order requiring the department of state revenue to determine the obligor's eligibility for a state income tax refund, whether the obligor filed a joint state income tax return, and if the obligor filed a joint state income tax return, the name and address of the individual with whom the obligor filed the joint state income tax return, if the court preliminarily determines that probable cause exists to believe that the obligor named in the petition:

- (1) was at least one thousand five hundred dollars (\$1,500) in arrears on child support payments at the time the custodial parent filed the petition under section 2 of this chapter; and
- (2) has intentionally violated the terms of the most recent support order.

(b) The department of state revenue, upon receiving an order under subsection (a), shall notify the court whether the obligor named in the order:

- (1) is eligible for a state income tax refund; and
- (2) has filed a joint state income tax return, and if the obligor has filed a joint state income tax return, the name and address of the individual with whom the obligor filed the joint state income tax return.

As added by P.L.27-2004, SEC.4. Amended by P.L.2-2005, SEC.75.

IC 31-16-12.5-5

Hearing; notice

Sec. 5. (a) If the court receives notification under section 4(b) of this chapter that the obligor is eligible for a state income tax refund, the court shall set the matter for a hearing at least thirty (30) days after the date that the court receives notification under section 4(b) of this chapter.

(b) If the court sets the matter for a hearing under subsection (a), the court must send notice of the hearing by certified mail, return receipt requested, to the most recent address of the obligor. The notice must include the date of the hearing and a copy of the petition filed under section 2 of this chapter.

(c) If the court receives notification under section 4(b) of this chapter that the obligor filed a joint state income tax return, the court shall send a notice to the individual with whom the obligor filed a joint state income tax return by certified mail, return receipt requested, and inform the individual:

- (1) of the hearing date;
- (2) that the court may order the individual's and obligor's joint state income tax refund to be intercepted for the obligor's past due child support payments; and
- (3) that the individual may petition the court or provide testimony at the hearing that the individual believes that part of the individual's and obligor's joint state income tax refund should not be intercepted for the obligor's child support and should be paid to the individual.

As added by P.L.27-2004, SEC.4.

IC 31-16-12.5-6

Final order; deadline

Sec. 6. (a) The court shall issue a final order for a state income tax refund setoff following a hearing under this chapter if the court determines by clear and convincing evidence that the obligor named in the petition:

- (1) is at least one thousand five hundred dollars (\$1,500) in arrears on child support payments; and
- (2) has intentionally violated the terms of the most recent child support order applying to the obligor.

(b) The final order must include the amount of child support arrearage that the department of state revenue shall withhold from the obligor's state income tax refund and the obligor's Social Security number.

(c) In order for the setoff to take effect with respect to a state income tax refund, the final order of the court must be received by the department of state revenue before November 1 of the taxable year for which the tax refund is payable.

As added by P.L.27-2004, SEC.4.

IC 31-16-12.5-7

Distribution of refund

Sec. 7. (a) The department of state revenue shall submit the refund amount set forth in the final order to the clerk of the circuit court for distribution.

(b) If the custodial parent:

- (1) has received or is receiving assistance under the Title IV-A program; or
 - (2) has assigned child support payments under IC 12-14-7-1;
- during the period of time for which child support is owed by the obligor, the court shall determine whether a portion of the refund must be distributed to the state under subsection (c).

(c) If the court determines that an amount is owed to the state under subsection (b), the court shall order the clerk of the circuit court to distribute the refund:

- (1) to the state in an amount determined by the court; and
- (2) to the custodial parent in any amount remaining after distribution under subdivision (1).

As added by P.L.27-2004, SEC.4.

IC 31-16-12.5-8**Interest charges**

Sec. 8. A final order issued under section 6 of this chapter may include interest charges in an amount determined under IC 31-14-12-1 or IC 31-16-12-2.

As added by P.L.27-2004, SEC.4.

IC 31-16-12.5-9**Fee**

Sec. 9. A custodial parent may not be charged a fee to seek a setoff of a state income tax refund.

As added by P.L.103-2007, SEC.22.